

By: Buckley

H.B. No. 4033

A BILL TO BE ENTITLED

AN ACT

relating to discipline management and access to telehealth mental health services in public schools.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 12A.004(a), Education Code, is amended to read as follows:

(a) A local innovation plan may not provide for the exemption of a district designated as a district of innovation from the following provisions of this title:

(1) a state or federal requirement applicable to an open-enrollment charter school operating under Subchapter D, Chapter 12;

(2) Subchapters A, C, D, and E, Chapter 11, except that a district may be exempt from Sections 11.1511(b)(5) and (14) and Section 11.162;

(3) state curriculum and graduation requirements adopted under Chapter 28;

(4) Chapter 37; and

(5) [~~4~~] academic and financial accountability and sanctions under Chapters 39 and 39A.

SECTION 2. Section 37.002, Education Code, is amended by amending Subsections (b), (c), and (d) and adding Subsection (b-2) to read as follows:

(b) A teacher may remove from class a student:

1 (1) who has been documented by the teacher to
2 ~~[repeatedly]~~ interfere with the teacher's ability to communicate
3 effectively with the students in the class or with the ability of
4 the student's classmates to learn; or

5 (2) whose behavior the teacher determines is ~~[so]~~
6 unruly, disruptive, or abusive and ~~[that it seriously]~~ interferes
7 with the teacher's ability to communicate effectively with the
8 students in the class or with the ability of the student's
9 classmates to learn.

10 (b-2) A teacher may remove a student from class under
11 Subsection (b) based on a single incident of behavior described by
12 Subsection (b)(1) or (2).

13 (c) If a teacher removes a student from class under
14 Subsection (b), the principal may place the student into another
15 appropriate classroom, into in-school suspension, or into a
16 disciplinary alternative education program as provided by Section
17 37.008. The principal may not return the student to that teacher's
18 class without the teacher's consent unless the committee
19 established under Section 37.003 determines that such placement is
20 the best or only alternative available and a conference in which the
21 teacher has been provided an opportunity to participate has been
22 held in accordance with Section 37.009(a). The terms of the removal
23 may prohibit the student from attending or participating in
24 school-sponsored or school-related activity.

25 (d) A teacher shall remove from class and send to the
26 principal for placement in a disciplinary alternative education
27 program or for expulsion, as appropriate, a student who engages in

1 conduct described under Section 37.006 or 37.007. The student may
 2 not be returned to that teacher's class without the teacher's
 3 consent unless the committee established under Section 37.003
 4 determines that such placement is the best or only alternative
 5 available and a conference in which the teacher has been provided an
 6 opportunity to participate has been held in accordance with Section
 7 37.009(a). If the teacher removed the student from class because
 8 the student has engaged in prohibited conduct or the elements of any
 9 offense listed in Section 37.006(a)(2)(B), (a)(2)(G), (a)(2)(H),
 10 or (b), or Section 37.007(a)(1), (a)(2)(B)(i), [~~37.007(a)(2)(A)~~]
 11 or (a)(3) [(b)(2)(C)] against the teacher or another student in the
 12 teacher's class, the student may not be returned to the teacher's
 13 class without the teacher's consent. The teacher may not be coerced
 14 to consent.

15 SECTION 3. Section 37.0021(f), Education Code, is amended
 16 to read as follows:

17 (f) For purposes of this subsection, "weapon" includes any
 18 weapon described under Section 37.007(a)(2)(A) [~~37.007(a)(1)~~].
 19 This section does not prevent a student's locked, unattended
 20 confinement in an emergency situation while awaiting the arrival of
 21 law enforcement personnel if:

- 22 (1) the student possesses a weapon; and
 23 (2) the confinement is necessary to prevent the
 24 student from causing bodily harm to the student or another person.

25 SECTION 4. Section 37.005(b), Education Code, is amended to
 26 read as follows:

27 (b) A suspension under this section may not exceed five

1 [three] school days.

2 SECTION 5. Sections 37.006(a) and (b), Education Code, are
3 amended to read as follows:

4 (a) A student shall be removed from class and placed in a
5 disciplinary alternative education program as provided by Section
6 37.008 if the student:

7 (1) engages in conduct involving a public school that
8 contains the elements of the offense of false alarm or report under
9 Section 42.06, Penal Code~~[, or terroristic threat under Section~~
10 ~~22.07, Penal Code]~~; or

11 (2) commits the following on or within 300 feet of
12 school property, as measured from any point on the school's real
13 property boundary line, or while attending a school-sponsored or
14 school-related activity on or off of school property:

15 (A) engages in conduct punishable as a felony;

16 (B) engages in conduct that contains the elements
17 of the offense of assault under Section 22.01(a)(1), Penal Code;

18 (C) sells, gives, or delivers to another person
19 or possesses or uses or is under the influence of:

20 (i) marihuana or a controlled substance, as
21 defined by Chapter 481, Health and Safety Code, or by 21 U.S.C.
22 Section 801 et seq.; or

23 (ii) a dangerous drug, as defined by
24 Chapter 483, Health and Safety Code;

25 (D) sells, gives, or delivers to another person
26 an alcoholic beverage, as defined by Section 1.04, Alcoholic
27 Beverage Code, commits a serious act or offense while under the

1 influence of alcohol, or possesses, uses, or is under the influence
2 of an alcoholic beverage;

3 (E) engages in conduct that contains the elements
4 of an offense relating to an abusable volatile chemical under
5 Sections 485.031 through 485.034, Health and Safety Code;

6 (F) engages in conduct that contains the elements
7 of the offense of public lewdness under Section 21.07, Penal Code,
8 or indecent exposure under Section 21.08, Penal Code; ~~or~~

9 (G) engages in conduct that contains the elements
10 of the offense of disorderly conduct ~~[harassment]~~ under Section
11 42.01 ~~[42.07(a)(1), (2), (3), or (7)]~~, Penal Code; or

12 (H) engages in conduct described by Section
13 37.002(b) and the student was previously removed from class at the
14 same school under that subsection for similar behavior ~~[, against~~
15 ~~an employee of the school district]~~.

16 (b) Except as provided by Section 37.007(d), a student shall
17 be removed from class and placed in a disciplinary alternative
18 education program under Section 37.008 if the student engages in
19 conduct on or off of school property against any school employee
20 that contains the elements of the offense of:

21 (1) retaliation under Section 36.06, Penal Code; or

22 (2) harassment under Section 42.07(a)(1), (2), (3), or
23 (7), Penal Code ~~[, against any school employee]~~.

24 SECTION 6. Sections 37.007(a), (b), (d), and (i), Education
25 Code, are amended to read as follows:

26 (a) Except as provided by Subsection (k), a student shall be
27 expelled from a school if the student:

1 (1) engages in conduct involving a public school that
2 contains the elements of the offense of terroristic threat under
3 Section 22.07, Penal Code;

4 (2) while~~(7)~~ on school property or while attending a
5 school-sponsored or school-related activity on or off of school
6 property:

7 (A) ~~(1)~~ engages in conduct that contains the
8 elements of the offense of unlawfully carrying weapons under
9 Section 46.02, Penal Code, or elements of an offense relating to
10 prohibited weapons under Section 46.05, Penal Code; or

11 (B) ~~(2)~~ engages in conduct that contains the
12 elements of the offense of:

13 (i) ~~(A)~~ aggravated assault under Section
14 22.02, Penal Code, sexual assault under Section 22.011, Penal Code,
15 or aggravated sexual assault under Section 22.021, Penal Code;

16 (ii) ~~(B)~~ arson under Section 28.02, Penal
17 Code;

18 (iii) ~~(C)~~ murder under Section 19.02,
19 Penal Code, capital murder under Section 19.03, Penal Code, or
20 criminal attempt, under Section 15.01, Penal Code, to commit murder
21 or capital murder;

22 iv ~~(D)~~ indecency with a child under
23 Section 21.11, Penal Code;

24 v ~~(E)~~ aggravated kidnapping under
25 Section 20.04, Penal Code;

26 vi ~~(F)~~ aggravated robbery under Section
27 29.03, Penal Code;

1 vii [~~(G)~~] manslaughter under Section
2 19.04, Penal Code;

3 viii [~~(H)~~] criminally negligent homicide
4 under Section 19.05, Penal Code; or

5 ix [~~(I)~~] continuous sexual abuse of young
6 child or disabled individual under Section 21.02, Penal Code; or

7 (3) while on or within 300 feet of school property, as
8 measured from any point on the school's real property boundary
9 line, or while attending a school-sponsored or school-related
10 activity on or off of school property, engages in conduct that
11 contains the elements of an offense under Section 22.01(a)(1),
12 Penal Code, against a school district employee or a volunteer as
13 defined by Section 22.053 of this code [~~engages in conduct~~
14 ~~specified by Section 37.006(a)(2)(C) or (D), if the conduct is~~
15 ~~punishable as a felony]~~.

16 (b) A student may be expelled if the student:

17 (1) engages in conduct involving a public school that
18 contains the elements of the offense of false alarm or report under
19 Section 42.06, Penal Code [~~, or terroristic threat under Section~~
20 ~~22.07, Penal Code]~~;

21 (2) while on or within 300 feet of school property, as
22 measured from any point on the school's real property boundary
23 line, or while attending a school-sponsored or school-related
24 activity on or off of school property:

25 (A) sells, gives, or delivers to another person
26 or possesses, uses, or is under the influence of any amount of:

27 (i) marihuana or a controlled substance, as

1 defined by Chapter 481, Health and Safety Code, or by 21 U.S.C.
2 Section 801 et seq.;

3 (ii) a dangerous drug, as defined by
4 Chapter 483, Health and Safety Code; or

5 (iii) an alcoholic beverage, as defined by
6 Section 1.04, Alcoholic Beverage Code;

7 (B) engages in conduct that contains the elements
8 of an offense relating to an abusable volatile chemical under
9 Sections 485.031 through 485.034, Health and Safety Code; or

10 (C) ~~[engages in conduct that contains the~~
11 ~~elements of an offense under Section 22.01(a)(1), Penal Code,~~
12 ~~against a school district employee or a volunteer as defined by~~
13 ~~Section 22.053; or~~

14 ~~[(D)]~~ engages in conduct that contains the
15 elements of the offense of deadly conduct under Section 22.05,
16 Penal Code;

17 (3) subject to Subsection (d), while within 300 feet
18 of school property, as measured from any point on the school's real
19 property boundary line:

20 (A) engages in conduct specified by Subsection
21 (a)(2) ~~[(a)]~~; or

22 (B) possesses a firearm, as defined by 18 U.S.C.
23 Section 921;

24 (4) engages in conduct that contains the elements of
25 any offense listed in Subsection (a)(2)(B)(i) ~~[(a)(2)(A)]~~ or (iii)
26 ~~[(C)]~~ or the offense of aggravated robbery under Section 29.03,
27 Penal Code, against another student, without regard to whether the

1 conduct occurs on or off of school property or while attending a
2 school-sponsored or school-related activity on or off of school
3 property; or

4 (5) engages in conduct that contains the elements of
5 the offense of breach of computer security under Section 33.02,
6 Penal Code, if:

7 (A) the conduct involves accessing a computer,
8 computer network, or computer system owned by or operated on behalf
9 of a school district; and

10 (B) the student knowingly:

11 (i) alters, damages, or deletes school
12 district property or information; or

13 (ii) commits a breach of any other
14 computer, computer network, or computer system.

15 (d) A student shall be expelled if the student engages in
16 conduct that contains the elements of any offense listed in
17 Subsection (a) [~~and may be expelled if the student engages in~~
18 ~~conduct that contains the elements of any offense listed in~~
19 ~~Subsection (b)(2)(C),~~] against any employee or volunteer in
20 retaliation for or as a result of the person's employment or
21 association with a school district, without regard to whether the
22 conduct occurs on or off of school property or while attending a
23 school-sponsored or school-related activity on or off of school
24 property.

25 (i) A student who engages in conduct described by Subsection
26 (a)(2) [~~(a)~~] may be expelled from school by the district in which
27 the student attends school if the student engages in that conduct:

1 (1) on school property of another district in this
2 state; or

3 (2) while attending a school-sponsored or
4 school-related activity of a school in another district in this
5 state.

6 SECTION 7. Section 37.0012, Education Code, is amended by
7 amending Subsection (a) and adding Subsections (a-1) and (b-1) to
8 read as follows:

9 (a) A single person at each campus must be designated to
10 serve as the campus behavior coordinator. The person designated
11 may be the principal of the campus or any other campus administrator
12 selected by the principal.

13 (a-1) Additional school staff members may assist the campus
14 behavior coordinator in the performance of the campus behavior
15 coordinator's duties, provided that the campus behavior
16 coordinator personally verifies that all aspects of this subchapter
17 are appropriately implemented.

18 (b-1) The campus behavior coordinator shall:

19 (1) monitor disciplinary referrals;

20 (2) report to the campus's threat assessment and safe
21 and supportive school team established under Section 37.115 any
22 student who engages in conduct that contains the elements of:

23 (A) the offense of terroristic threat under
24 Section 22.07, Penal Code;

25 (B) the offense of unlawfully carrying weapons
26 under Section 46.02, Penal Code; or

27 (C) an offense relating to prohibited weapons

1 under Section 46.05, Penal Code; and

2 (3) report to the campus's threat assessment and safe
3 and supportive school team established under Section 37.115 and the
4 iWatchTexas community reporting system operated by the Department
5 of Public Safety any concerning student behaviors or behavioral
6 trends that may pose a serious risk of violence to the student or
7 others.

8 SECTION 8. Section 37.011(b), Education Code, is amended to
9 read as follows:

10 (b) If a student admitted into the public schools of a
11 school district under Section 25.001(b) is expelled from school for
12 conduct for which expulsion is required under Section 37.007(a),
13 (d), or (e), [~~or for conduct that contains the elements of the~~
14 ~~offense of terroristic threat as described by Section 22.07(c-1),~~
15 ~~(d), or (e), Penal Code,~~] the juvenile court, the juvenile board, or
16 the juvenile board's designee, as appropriate, shall:

17 (1) if the student is placed on probation under
18 Section 54.04, Family Code, order the student to attend the
19 juvenile justice alternative education program in the county in
20 which the student resides from the date of disposition as a
21 condition of probation, unless the child is placed in a
22 post-adjudication treatment facility;

23 (2) if the student is placed on deferred prosecution
24 under Section 53.03, Family Code, by the court, prosecutor, or
25 probation department, require the student to immediately attend the
26 juvenile justice alternative education program in the county in
27 which the student resides for a period not to exceed six months as a

1 condition of the deferred prosecution;

2 (3) in determining the conditions of the deferred
3 prosecution or court-ordered probation, consider the length of the
4 school district's expulsion order for the student; and

5 (4) provide timely educational services to the student
6 in the juvenile justice alternative education program in the county
7 in which the student resides, regardless of the student's age or
8 whether the juvenile court has jurisdiction over the student.

9 SECTION 9. Section 37.019, Education Code, is amended by
10 amending Subsection (a) and adding Subsection (b-1) to read as
11 follows:

12 (a) This subchapter does not prevent the principal or the
13 principal's designee from ordering the immediate placement of a
14 student in a disciplinary alternative education program if the
15 principal or the principal's designee reasonably believes the
16 student's behavior is [~~so~~] unruly, disruptive, or abusive and [~~that~~
17 ~~it seriously~~] interferes with a teacher's ability to communicate
18 effectively with the students in a class, with the ability of the
19 student's classmates to learn, or with the operation of school or a
20 school-sponsored activity.

21 (b-1) The principal or principal's designee may order the
22 emergency placement or expulsion of a student under this section
23 based on a single incident of behavior by the student.

24 SECTION 10. Subchapter A, Chapter 37, Education Code, is
25 amended by adding Section 37.024 to read as follows:

26 Sec. 37.024. PENALTIES FOR IMPOSITION OF DISCIPLINARY
27 MEASURES PROHIBITED. The agency may not withhold any state funding

1 or impose a penalty on a school district based on the number of
2 students in the district that have been removed from a classroom,
3 placed into in-school or out-of-school suspension, placed in a
4 disciplinary alternative education program or a juvenile justice
5 alternative education program, or expelled.

6 SECTION 11. Section 37.115, Education Code, is amended by
7 amending Subsection (d) and adding Subsection (h-1) to read as
8 follows:

9 (d) The superintendent of the district shall ensure, to the
10 greatest extent practicable, that the members appointed to each
11 team have expertise in counseling, behavior management, mental
12 health and substance use, classroom instruction, special
13 education, school administration, school safety and security,
14 emergency management, and law enforcement. A team may serve more
15 than one campus of a school district, provided that:

- 16 (1) each district campus is assigned a team; and
17 (2) in serving a particular campus, the team includes
18 the person designated to serve as the campus behavior coordinator
19 under Section 37.0012 for that campus.

20 (h-1) After informing the superintendent of a team's
21 determination under Subsection (h), the team shall immediately
22 submit a report on the team's determination through the iWatchTexas
23 community reporting system operated by the Department of Public
24 Safety.

25 SECTION 12. Subchapter F, Chapter 38, Education Code, is
26 amended by adding Section 38.2545 to read as follows:

27 Sec. 38.2545. TEXAS CHILD HEALTH ACCESS THROUGH

1 TELEMEDICINE. (a) In this section:

2 (1) "Consortium" means the Texas Child Mental Health
3 Consortium established under Chapter 113, Health and Safety Code.

4 (2) "Texas Child Health Access through Telemedicine
5 program" means the Texas Child Health Access through Telemedicine
6 program operated by the consortium.

7 (b) If the consortium makes available mental health
8 services to a school district through the Texas Child Health Access
9 through Telemedicine program, the district shall offer to each
10 student enrolled in the district access to those mental health
11 services.

12 (c) A school district may not provide a mental health
13 service to a student who is under 18 years of age unless the
14 district obtains written consent from the parent or legal guardian
15 of the student as required by Section 113.0152, Health and Safety
16 Code.

17 (d) A school district may not require a student to
18 participate in any service provided under Subsection (b).

19 (e) Before the beginning of each school year, the agency
20 shall determine at which school districts the Texas Child Health
21 Access through Telemedicine program is available and verify that
22 each of those school districts is in compliance with Subsection
23 (b).

24 SECTION 13. Section 12A.004(a), Education Code, as amended
25 by this Act, applies only to a local innovation plan adopted or
26 renewed on or after the effective date of this Act. A local
27 innovation plan adopted or renewed before the effective date of

1 this Act is governed by the law in effect on the date the plan was
2 adopted or renewed, and the former law is continued in effect for
3 that purpose.

4 SECTION 14. This Act applies beginning with the 2023-2024
5 school year.

6 SECTION 15. This Act takes effect immediately if it
7 receives a vote of two-thirds of all the members elected to each
8 house, as provided by Section 39, Article III, Texas Constitution.
9 If this Act does not receive the vote necessary for immediate
10 effect, this Act takes effect September 1, 2023.